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December 17, 2021

The Honorable Jocelyn Boyd
Chief Clerk and Administrator
South Carolina Public Service Commission
Synergy Business Park, The Saluda Building
101 Executive Center Drive
Columbia, SC 29210

**Re: Lockhart Power Company response to ORS letter dated December 3, 2021
Docket No. 2021-339-E**

Dear Ms. Boyd:

I am writing on behalf of Lockhart Power Company (“Lockhart Power” or the “Company”) to respond to ORS’s letter dated December 3, 2021 in the above-referenced docket regarding Lockhart Power Company’s Renewable Energy Credit Purchase and Sale Agreement (“REC Agreement”).

First, we note that ORS expresses no objection to the REC Agreement or to Lockhart Power’s request for confidential treatment. ORS likewise expresses no objection to Lockhart Power’s proposed accounting treatment of the revenues and expenses associated with the REC Agreement.

ORS’s only comments concern (1) the length of time between the time ORS made its informal recommendations to the Company and the time it took Lockhart to consider and implement those recommendations and file the REC Agreement with the Commission; and (2) ORS’s belief that each REC contract should be presented to the Commission for its approval under Regulation 103-303.B and S.C. Code Ann. § 58-27-980 prior to entering into such contracts.

As to the first point, Lockhart Power acknowledges that it took some time to consider and implement ORS’s recommendations. It also took some time on the front end for ORS to review and comment on Lockhart Power’s proposed REC tariff that would have applied to this and other

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REC Agreements. This was the first REC Agreement Lockhart Power has entered into and it is not aware of any precedent in this area; thus, the issue was a novel one. In any event, ORS does not appear to be requesting any relief from the Commission on this point.

As to the second point, we note that the initial timing of the REC Agreement was driven by the customer's desire to begin buying credits effective January 1, 2021, and the customer understood that the agreement would be subject to any necessary regulatory approvals, and the transactions could potentially be reversed if any such approval ultimately was not obtained. Additionally, Lockhart Power does not agree with ORS's interpretation of Regulation 103-303.B and S.C. Code Ann. § 58-27-980 to require the filing and pre-approval of REC Agreements. We understand the regulation and statute to govern rates and charges for furnishing electricity, and we believe the sale of RECs is somewhat different in that: a) RECs are not electricity, or any functional aspect of electricity necessary to serve customers (unlike energy, capacity, transmission or ancillary services); b) the sale of RECs is voluntary; c) a competitive market exists for RECs; and d) the referenced regulation and statute do not appear to have envisioned being applied to REC agreements. We are not aware of any other REC Agreements that have been filed with the Commission for approval. This is why Lockhart Power has filed the REC Agreement with the Commission for approval *to the extent such approval may be required*.

We note that the General Assembly conferred upon the Commission "[f]ull power and authority ... to accomplish the purposes expressed in this section." Additionally, Regulation 103-303.B requires prior approval of certain agreements only to the extent they are not "exempt from such approval by statute, order of the commission, or other provision of law." We respectfully request that the Commission find that voluntary, bilateral, single-purpose (*i.e.*, unbundled or "pure") REC Agreements do not require approval of the Commission pursuant to S.C. Code Ann. § 58-27-980.

If not, then we ask that the Commission issue an order, pursuant to Reg. 103-303.B, exempting certain REC Agreements from the requirement of Commission approval. In order to avoid the potentially significant cost and administrative burdens associated with preparing and filing a number of substantially similar and relatively immaterial REC agreements each year, we propose that any REC agreement entered into by Lockhart Power be exempted from the requirement for Commission approval if the REC agreement:

- Substantially follows the form of the REC Agreement that was filed by Lockhart Power on October 27, 2021;
- Relates to Lockhart Power selling RECs to an industrial customer;
- Is a voluntary purchase by the industrial customer;

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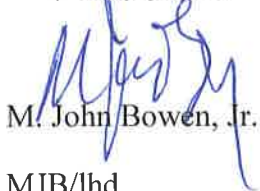
- Has a term of 3 years or less; and
- Has an annual expected value of \$100,000 or less.

Alternatively, should the Commission feel prior approval of all REC Agreements is necessary, regardless of materiality, we respectfully request that the Commission approve the REC Agreement filed by Lockhart Power on October 27, 2021, *nunc pro tunc*, at its earliest convenience, because it is in the public interest to do so and because ORS has raised no objections to the substance of the REC Agreement. The REC Agreement is in the public interest because (1) it allows the Company to receive revenues for renewable energy credits that, absent such an agreement, the Company would not have received; and (2) it allows a large industrial SC customer to meet its voluntary sustainability goals without impacting any other entity. We also ask that the Commission grant Lockhart Power's request for confidential treatment of the REC Agreement for the reasons stated in our letter of October 27, 2021, to which ORS has raised no objections.

Finally, to the extent the Commission finds that prior approval of REC Agreements is required by law, Lockhart Power proposes to include in any future REC Agreements language indicating that the agreement is "subject to approval of the Commission." While it may not always be possible to obtain approval of the Commission prior to signing agreements related to credits due to the competitive nature of the REC market, particularly given the regulatory delays that may ensue, we believe it is consistent with the Commission's past practice to include language clearly indicating that an agreement is being entered into subject to final regulatory approval.

Please contact us if you have any questions. Thank you for your assistance.

Very truly yours,



M. John Bowen, Jr.

MJB/lhd
Enclosure